



September 28, 1999

Mr. Mark B. Taylor
City Attorney
City Hall
630 East Hopkins
San Marcos, Texas 78666

OR99-2734

Dear Mr. Taylor:

You ask whether certain information is subject to required public disclosure under the, Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 128952.

The City of San Marcos (the "city") received a request for copies of certain city ordinances as well as information concerning Mr. Sidney Weatherford, Weatherford Homes, or Weatherford Construction. You inform us that the city intends to release copies of the requested city code ordinances. You assert that the remaining requested information is excepted from required public disclosure based on section 552.103 of the Government Code.

Section 552.103(a) of the Government Code reads as follows:

(a) Information is excepted from [required public disclosure] if it is information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 588 (1991). A governmental body has the burden of providing relevant facts and documents to show the applicability of an exception in a particular situation. The test for establishing that section 552.103(a) applies is a two-prong showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Texas Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin, 1997), *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.). In this instance, you have made the requisite showing that the requested information relates to reasonably anticipated litigation for purposes of section 552.103(a).

However, section 552.103 is not applicable to some of the submitted records. The minutes and public notice of an open meeting subject to the Open Meetings Act are public records. Gov't Code §§ 551.022, .041; *see* Open Records Decision No. 161 (1977) (information specifically made public by statute does not come within litigation exception). Additionally, a municipal ordinance may not be withheld under section 552.103. *See* Open Records Decision No. 551 (1990). Moreover, if the opposing party in the litigation has seen or had access to any of the information in these records, there is no section 552.103(a) interest in withholding that information from the requestor. Open Records Decision Nos. 349 (1982), 320 (1982). Finally, the applicability of section 552.103(a) ends once the litigation concludes. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Kay H. Hastings
Assistant Attorney General
Open Records Division

KHH/nc

Ref.: ID# 128952

Encl. Marked documents

cc: Mr. Jason C. Spencer
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(w/o enclosures)